(1)

87 No 885

Supreme Court, U.S.
FILED
NOV 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

MUMTAZ BANO KHAN,

Appellant

v.

JIMMY R. JENKINS, JOHN H. CARSON, MARION D. THORPE, ELIZABETH CITY STATE UNIVERSITY,

Appellees

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Mumtaz Bano Khan
Pro Se
Route 2, P.O. Box 691
Elizabeth City NC 27909

Brief Printing Specialist, 1001 E. Main Street, Suite 210
Richmond, Virginia 23219, (804) 644-0700

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the continuing violation rule was inapplicable to the Petitioner's claims, under Title VII of the Civil Rights Act and Secs 42 USC 1983, and 1981, for wrongful termination and denial of promotion, and that they were time barred?

2. Are the Peitioner's claims, under Title VII of the Civil Rights Act of 1964 and Sec 42 USC 1983 and 1981, for racially discriminatory termination (by 1 year final contract) and for denial of promotion maintainable, when they preceded the applicable limitations periods, but were part of a continuing policy and practice of employment discrimination by Elizabeth City State University, which consisted of denials of promotion, terminations, unequal pay and

work assignments, when such policy and the unequal pay and work assignment violations continued into the limitations period?

3. Can the Petitioner maintain, under Title VII of the Civil Rights Act and Secs 42 USC 1981 and 1983, an action for racially discriminatory termination of employment, when she was given a one year terminal contract for failure to have 1 year of approved doctorate study at a time beyond the limitation period, and the last day of her employment was within the limitaitons period, and it is shown that when the University gave black faculty members a 1 year terminal contract for the same reason, they were promised rehire after completion of the required study and that this was part of a continuing policy of racial discrimination.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, ____

MUMTAZ BANO KHAN, Petitioner,

vs.

JIMMY R. JENKINS, JOHN H. CARSON, MARION D. THORPE, ELIZABETH CITY STATE UNIVERSITY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Mumtaz Bano Khan
Pro Se
Route 2, P.O. Box 691
Elizabeth City NC 27909

I N D E X PAGE

Opinions Below..... v
Jurisdiction..... v
Questions Presented..... i
Statutes Involved..... vi
Statement..... 1
Reasons for Granting this Writ..... 9
Conclusion..... 26

Appendix A
Opinion of the Court of Appeals... 1
Order of the Court of Appeals..... 3

42 USC 1981..... 25
42 USC 1983..... 25
42 USC 2000e-5(e)..... 26
Amended Complaint..... 27
Pretrial Exhibit (Panda Letter)... 30

TABLE OF AUTHORITIES

CASES	PAGE
Chung v. Pomona Valley Community Hospital, 667 F.2d 788 (9th Cir 1982)	16
Delaware State College v. Ricks, 449 US 250, 66 L Ed 2d 431, 101 S Ct 498	22
Egelston v. State University College at Geneseo, 535 F.2d 752 (2nd Cir 1976)	13
Havens Realty Corp. v. Coleman, 455 US 363, 71 L Ed 2d 214, 102 S Ct1114	19
Smith v. American President Lines, Ltd., 571 F.2d 102 (2nd Cir 1978)	13

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Mumtaz Bano Kahn, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the United State Court of Appeals for the Fourth Circuit, entered in the above case on August 4, 1987.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and is printed in Appendix A, hereto at p. 3. The order of the United States Court of Appeals for the Fourth Circuit, on rehearing is printed in Appendix A infra, p. 1.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit,

Appendix A, infra p. 3, was entered on the 8th day of March 19, 1987, a timely Petition for Rehearing was denied on August 4, 1987, Appendix A, p. 1. The jurisdiction of this Court is invoked under 28 USC Sec 1254(1), 28 USC 1651.

STATUTES INVOLVED

42 USC 2000(e)-5(e)

42 USC Sec 1981

42 USC Sec 1983

which are set out in pertinent part in the Appendix infra 25.

STATEMENT OF THE CASE

The Petitioner filed this suit on December 30, 1982, in the U.S. District Court of the Eastern District of N.C., alleging as amended, racial, national origin and sexual discrimination in employment, in violation of Title VII, 42 USC Sec 1983, 42 USC Sec 1981, and the equal pay act. The Defendants filed a motion to dismiss and for summary judgment on statute of limitations and timeliness grounds, which was granted by the District Court. The equal pay act violation was compromised, and is not involved in this appeal.

The Petitioner, Mumtaz Bano Khan, is an Asian American and a United States citizen of Pakistani origin. The Respondents are Elizabeth City State University and individual members of its administration. Elizabeth City State

University is a state institutionand has an overwhelmingly black majority in its administrative positions, faculty and student body.

In August, 1971, Mrs. Khan was hired by Elizabeth City State University (ECSU) as an instructor in its Business and Economics Department.

On April 14, 1978, the chairman of her department, saidthat he was recommending her promotion. Instead, on April 27, 1978, she was denied promotion because her doctorate was from an unaccredited university, and told that she could not continue at the rank of instructor, therefore, he had to reduce her to lecturer.

The Plaintiff filed an EEOC charge, on November 7, 1978, App 228[1]. There she complained of racial and sex discrimination in denying her promotion, tenure and equal pay for equal work. The EEOC gave that charge its case number 045790237. Shortly thereafter, the university's administrative legal assistant wrote the vice chancellor, complaining about the Plaintiff and her husband, Dr. Khan, who also taught at the university. In the letter he stated:

> in the future I suggest and strongly recommend that university employees who conduct themselves for sustained periods of time in

---

[1]References to the record, e.g., App ____, are to pages in the Appendix filed in the United States Court of Appeals for the Fourth Circuit. References to (Appendix __a) are to the Appendix to this Petition.

> manners similar to that of the Khans, should be dismissed and/or terminated at the university's earliest convenience..." (pre-trial exhibit 81.

The EEOC took no action on the charge Mrs. Khan filed in November, 1978. During the academic year 1978-79, the Plaintiff continued to work.

On April 25, 1979, the department chairman, recommended that Mrs. Khan not be reappointed for the coming year because she had been employed for eight years but had not earned additional academic credit beyond her masters degree at an accredited institution, App 161. However, at the same time, blacks like Evelyn Roberts were being promoted and given tenure, with less credentials than the Petitioner, App 199-203, 209, 210)

On August 31, 1979, the vice-

chancellor, wrote the Petitioner, telling her that her appointment for the coming year (1979-80) would be a terminal appointment, App 162. Under the contract her employment with ECSU would end on May 20, 1980.

The Petitioner's teaching assignments for the second semester of the 1979-80 year, were finally set when the second semester began in 1980. She was assigned to teach 4 courses, all with large enrollments. This involved more work for less money than that being done by the black members of the department. Additionally, at the beginning of the semester, she was assigned one of the largest groups of students to advise.

Her last day of employment was May 20, 1980. On May 8, 1980, she filed a new charge with the EEOC. On her first charge, she received a

right to sue letter dated August 20, 1981, from the Justice Department, App 229. She did not file suit within 90 days after receipt of that letter, as the second charge was pending. Later in early October 1982, she received a right to sue letter based on her second charge (018800539). Following that she filed the instant suit on December 30, 1982.

In an Amended Complaint, the Petitioner alleged a policy and practice of continuing racial and national origin, and set forth discrimination against her in work assignments, pay, denial of tenure and promotion and termination of employment. As stated, the Defendants moved to dismiss all claims in the Amended Complaint as being time barred. The District Court confirmed the dismissal of all Title VII complaints recommended by the Magistrate and those for

the violations of Sec 42 USC 1981 and Sec 42 USC 1983 as all being barred by the 3 year statute of limitations. Later the Court entered a final Order dismissing all claims in the case, App 250.

The Petitioner appealed to the Court of Appeals for the Fourth Circuit. There the parties agreed that the North Carolina 3 year Statute of Limitations applied to the Petitioner's Sec 1983 and 1981 actions. The Court of Appeals held that the Petitioner's claims for unequal pay, under Sec 1983 and Title VII, were not barred, under the continuing violaton rule; that the Petitioner's claim for unequal work assignments was not barred if they were made during the limitaions period, as claimed. The Court held that although the Petitioner had shown present violations, that did not make the continuing violation rule

applicable because they were not the same type of violation as the earlier termination and denial of promotion and, consequently, the Petitioner's claims for wrongful termination and denial of promotion were time barred.

The Petitioner's case was remanded for trial on the unequal pay and work assignments claims.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Fourth Circuit applying the continuing violation theory in employment actions under Title VII of the Civil Rights Act of 1964 and Sec 1983 and 1987 of Title 42, conflicts with the decisions of the Second and Ninth Circuits, and raises an important question of federal law.

It is respectfully submitted that the Court of Appeals for the Fourth Circit erred in applying the continuing violation principle and holding that the Petitioner's Sec 1983 and VII claims for her discriminatory termination was time barred.

The Petitioner complained, in the Trial Court and Court of Appeals, that she was the victim of a discriminatory denial of promotion, demotion and discharge in violation of her rights under Title VII Secs 1981 and 1983. She

further urged that these violations were not time barred because they were continuing violations under a continuous practice and policy of employment discrimination against her and other Asians by Elizabeth City State University.

A series of events illustrates the Petitioner's contention. In April 1978, her Dept. Chairman said he was recommending her for promotion. Instead she was denied promotion and demoted to lecturer for the next year. Following that year, in August 1979, she was given a terminal contract. Her last day of work was in May 1980.During this whole time, she was discriminated against in pay and work assignments and she alleged a continuous course of discrimination against her and other Asians in her amended complaint in paragraphs 2, 5, 18,

33, 51, 53, 54, 65, 73, (Appendix 27, et seq. and in her second EEOC charge, App 230.

While in April of 1978, the Petitioner was denied promotion and demoted, she was not "denied tenure". She received no notice that she was then being denied tenure and the affirmative action committee reported "the offered contract did not discriminate against her or jeopardize her chance for promotion and tenure at a later date". Consequently she remained eligible for promotion after April 1978.

While her denial of promotion (April 78) and the issuance of the terminal contract on August 7, 1979, occurred more than 180 days before she filed her EEOC charge in May 1980, and 3 years before she filed the present case in December 1982, the Petitioner urged they were not

time barred because they were continuing violations. The policy of employment discrimination, the discrimination in pay and work assignments were the violations alleged to have occured within the applicable limitation period.

The Court of Appeals held that the continuing violation principle was not applicable to the Petitioner's case, ruling that "...a continuing violation can be shown only by allegations, detailing the same type of discriminatory action or violation. (Court of Appeals Opinion Appendix p. 16, emphasis added). The Court felt that the discrimination in pay and work assignments were not the same type of violation as the denial of promotion and termination, which preceded them. This requirement of similarity does not appear in any decision of the Supreme Court, and is contrary to the statement and

application of the rule in the decisions of the Second Circuit: In Smith v. American President Lines, Ltd., 571 F2d 102 (1978), decided after United Air Lines, Inc. v. Evans, 431 U.S. 553, the Circuit Court stated:

> "There is authority in this circuit for the proposition that a plaintiff may defeat a time bar to a Title VII civil suit by asserting subsequent identifiable acts of discrimination related to a time barred incident... Supra 105.

It also explained 3 earlier decisions including Egelston v. State University College At Geneseo, 535 F.2d 752 (2nd Cir 1976), where recovery was allowed:

> "In those cases, after notice of discharge or failure to promote, the meployee continued on in the service of the deendant at allegedly discriminatory salary rates or was later denied reemployment or promotion by the defendant's discriminatory acts." Supra 108.

Egelston is a case identical in principle

to the Petitioner's. Egelston, a college teacher, was hired in September 1970. Her teaching contract was to expire in June 1973. On May 15, 1972, she was notified it would not be renewed. Her EEOC charge ws filed in January 1973, more than 180 days beyond the notice of termination. The Court noted:

> "In her complaint, she alleged that her discharge had been motivated by her sex; that throughout her employment she was paid less than males performing similar work...Her complaint further stated that all this was but a manifestation of the college's practice of excluding women from certian job classifications, paying them lower salaries than their male counterparts, precluding them from admission to training programs, and denying them promotions and transfers." Supra 754.
>
> * * *
>
> "...dismissal of Dr. Egelston's complaint was clearly improper. In her complaint, she alleged several acts of discrimination as to which her January 1973 filling was timely. Dr.

> Egelston claimed that she was paid a salary lower than her male peers until she left Geneseo in June 1973, and that SUNY had improperly refused to rehire her and her husband after that date. Supra 755.
>
> * * *
>
> "One final reason remains to prevent us from regarding Dr. Egelston's complaint as time-barred. She alleges that the discrimination against her was not an isolated act, but rather constituted a part of the college's continuing policy to deny women access to its upper echelons. And, at the time of filing, Dr. Egelston was still an employee of the college injured by the practice. A principal purpose of a statute of limitations is to bar stale complaints; yet, according to Dr. Egelston's complaint, the discriminatory policy here was still fresh. These allegations of continuing discrimination are sufficient to constitute a timely filing with the agency." Supra 755.

Thus discrimination in pay, granting transfers and promotions which occurred after the termination notice was given, and within the limitations period, were

sufficient to show a continuing violation and allow Egelston to recover for her discharge. This Second Circuit result is diametrically opposed to that arrived at in the Petitioner's case in Fourth Circuit.

Then Fourth Circuit decision in Mrs. Khan's case is also in conflict with those of the Ninth Circuit. In Chung v. Pomona Valley Community Hospital, 667 F.2d 788 (Ninth Cir 1982), a post Ricks discrimination case, the employee, Chung, relied upon the continuing violation rule "to revive" violations claimed to be time-barred under Title VII and Sec 42 USC 1981. The Court said:

> "...he alleged that the Hospital discriminated against him on account of race by denying him promotions, proper seniority status and permission to attend professional seminars, by assigning him undesirable hours, by eliminating his position and then demoting him, and by

> threatening him with dismissal. Although Chung did not attempt to inventory all the discriminatory acts, he cited several examples. The earliest act identified occurred on May 2, 1974; the latest, on July 8, 1975. Supra 790.
>
> * * *
>
> "The final version added three allegations not found in the EEOC charge: (1) the defendants had engaged in a "pattern and practice" of discrimination "for a long period of time"; (2) Chung had been denied another promotion on account of his race after he brought this suit;... Supra 790.
>
> * * *
>
> "Chung seeks to recover for acts that predate the limitation period. He reasons that these acts were part of a pattern of discrimination that continued even after he brought this suit, and that the limitation period did not begin to run until the pattern of discrimination ended." Supra 790.

The Court did not require the acts within the limitations period to be similar to these which predated it. It held Chung could rely upon the continuing violation rule to make all of the diverse violations actionable:

> "In this case, the district court held that the facts alleged by Chung did not constitute a continuing violation of Sec 1981. The basis for this conclusion is not entirely clear. Chung's complaint adequately alleged a continuing violation, and the record does not contain sufficient evidence to support a finding by the district court that there was no genuine factual dispute on this issue." Supra 791, 792.

Thus, had the Petitioner's case arisen in the Second or the Ninth Circuit, she could have recovered for her termination and denial of promotion.

II.

The decision of the Fourth Circuit applying the continuing violation rule conflicts with the decisions of the Supreme Court, and raises an important question of federal law.

The Petitioner submits that the decision of the Fourth Circuit in her case, is in conflict with the dicision of the Supreme Court in Havens Realty Corp. v Coleman, 455 US 363, 71 L Ed 2d 214, and in Delaware State College v Ricks, 449 US 250, 66 L Ed 2d 431. In both of these cases, the Supreme Court recognized and applied the continuing violation principles. In Havens Realty v Coleman, the Court said:

> "We agree with the Court of Appeals that for purposes of Sec 812(a), a 'continuing violation' of the Fair Housing Act should be treated differently from one discrete act of discrimination. Statutes of limitations such as that contained in Sec 812(a) are intended to keep stale claims out of the

> Courts....Where the challenged violation is a continuing one, the staleness concern disappears. Petitioners' wooden application of Sec 812(a), which ignores the continuing nature of the alleged violation, only undermines the broad remedial intent of Congress, embodied in the Act. Like the Court of Appeals, we therefore conclude that where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within 180 days of the last asserted occurrence of that practice." Supra 380.

No incident, concerning Coleman or Willis, occurred within the limitation period. The individual incidents and their nature were not considered important. The Court said:

> "Applying this principle to the 'neighborhood' claims of Coleman and Willis, we agree with the Court of Appeals that the 180-day statute of limitations is no bar. Willis and Coleman have alleged that petitioners' continuing

> pattern, practice, and policy of unlawful racial steering has deprived them of the benefits of interracial association arising from living in an integrated neighborhood. Plainly the claims, as currently alleged, are based not solely on isolated incidents involving the two repsondents, but a continuing violation manifested in a number of incidents--including at least one (involving Coles) that is asserted to have occurred within the 180-day period." Supra 381.

The Court did distinguish between the interest being injured, holding injury to the right to truthful information would not be extended by an injury to the right to live in a discrimination free community. Here only one interest of the Petitioner is involved, her interest in discrimination free employment.

Like the respondents in Havens Realty, the Petitioner alleged a continuing policy and practice of unlawful discrimination, the only

difference being, in her case it was employment discrimination, rather than housing. Contrary to the principle stated in Havens Realty, the Court of Appeals in her case, "woodenly" ignored the continuing nature of the alleged violation, and concentrated on the "discrete acts" which occurred. Thus, unlike the respondents in Havens Realty, she was not able to recover for her denial of promotion and discharge actions which proceeded the limitations period.

The Court of Appeals indicated it was following the ruling in Delaware State College v Ricks. However, nowhere does Ricks indicate that the violations within the limitations period have to be the same type of discriminatory action or violations as those which predate it.

Ricks said the "emphasis...is upon whether any present violations exist".

Supra 258.

Unlike Ricks, the Petitioner did identify the present violations, the discriminating acts which continued until the actual termination of her employment, in May 1980. They were discriminations in pay and work assignments, and the existing policy of discriminations.

The Fourth Circuit said that subsequent acts would have to be the same type, as her termination. However, that view renders meaningless the Court's statement in Ricks, that if he wished to rely upon a continuing violation, so as to make his prior discharge timely, he should have identified the alleged discriminatory acts that continued until, or occurred at the time of the actual termination of his employment. Supra 257. Under that theory, it would have been uselessfor Ricks to have specified

such acts, as they would all have necessarily had to have been of a different type from his termination, and consequently, could not have extended the Statute of Limitations, in any event. In footnote 8, the Court comments on other incidents which occurred to Ricks after the denial of tenure. It did not find them insufficient because they were not similar to the discharge, but because they weren't violations at all. Supra 257.

In Ricks, the Court said:

> "Ricks would have had to allege and prove that the manner in which his employment was terminated differed discriminatorily from the manner in which the College terminated other professors who also had been denied tenure." Supra 258.

Here the Petitioner claims that the University, as a part of its alleged policy of general employment

discrimination, promised to rehire black faculty members who were given one year terminal contracts for reasons similar to hers. A pretrial exhibit shows that a black member of her Department, Dandson Panda, who was also given a 1 year terminal contract, was promised, when terminated, that he would be rehired after 1 year, if he improved his academic qualifications, Appendix 30. No promise of rehire was made to the Petitioner, when she was terminated, and thus the manner in which she was terminated, differed discriminatorily from that by which blacks were terminated. By alleging a discriminatory discharge, and a general discriminatory syetem of empl;oyemtn, the Petitioner believes she adequately presented this claim. The Court of Appeals held she had not.

Thus, the Petitioner submits the decision of the Court of Appeals is in conflict with the principles stated in the Ricks and Havens Realty decisions of this Court, by adding requirements to the continuing violation rule, never expressed by the Court, and that having alleged present violation, she should have been allowed to proceed on the earlier claims of discharge and denial of promotion, under the continuing violation rule.

CONCLUSION

The continuing violation rule is an essential part of civil rights law and its proper statement and application is an important question of Federal law.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,
MUMTAZ BANO KHAN

Mumtaz B Khan

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-2252

Mumtaz Bano Khan, Appellant,

versus

Jimmy R. Jenkins, et al, Appellees.

On Petition for Rehearing with Suggestion for Rehearing In Banc.

O R D E R

The appellant's petition for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Chapman, with the concurrence of Judge Ervin and Judge Haynsworth.

For the Court,

JOHN M. GREACEN
CLERK

Filed August 4, 1987.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-2252

Mumtaz Bano Khan, - Appellant

versus,

Jimmy R. Jenkins, John H. Carson
Marion D. Thorpe, Elizabeth City
State University,

Appellees

Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. W. Earl Britt, District Judge. (C/A 82-39).

Argued: November 13, 1986

Decided: March 19, 1987

Before ERVIN and CHAPMAN, Circuit Judges and HAYNSWORTH, Senior Circuit Judge.

Oldric J. LaBell, Jr., (Herbert Mullen; Hall, Mullen, Brumsey & Small on brief) for Appellant; Thomas J. Ziko, Assistant Attorney General (Lacy H. Thornburg, Attorney General on brief) for Appellees.

CHAPMAN, Circuit Judge:

The district court held that the appellant's claims for relief under Title VII, the Age Discrimination in Employment Act, and Sec 1981 and Sec 1983 were time-barred. We reverse and remand in part, finding that some of the alleged violations arose within the statute of limitations time period, and that other violations constituted "continuing violations" so as to extend the period for filing a complaint.

I.

Mumtaz Bano Khan is a United States citizen of Pakistani origin. In August 1971, she was hired by the appellee, Elizabeth City State University ("ECSU" or the "University") as an instructor in its Business and Economics Department. ECSU, part of the University of North Carolina system, is a state institution.

Historically, ECSU was an all-black college, and has maintained a significant black majority in its administrative positions, faculty and student body.

ECSU had employed Mrs. Khan as an instructor under a series of one-year contracts for a period of seven years, beginning in 1971. The last of these one-year contracts covered the 1977-78 academic year. According to the University's tenure policies, appointments to the rank of instructor (an untenured position) are limited to seven years. A faculty member who has held the rank of instructor for seven years must either be promoted, appointed to a "special faculty" (lecturer) position or released from employment. ECSU offered Mrs. Khan an appointment as a lecturer for the 1978-79 academic year, which she accepted. Mrs. Khan filed a

charge with the Equal Employment Opportunity Commission ("EEOC") on November 7, 1978, alleging that ECSU had denied her promotion, tenure and equal pay because of her race and gender. The EEOC did not take any immediate action on this first charge.

After Mrs. Khan had served as a lecturer for the 1978-79 academic year, ECSU decided to terminate her employment at the end of the 1979-80 academic year. ECSU notified Mrs. Khan of its intent to terminate her employment by a letter dated July 31, 1979, which letter contained a contract specifying that her appointment for the 1979-80 academic year was terminal. Mrs. Khan protested the decision, but did subsequently sign the contract on August 14, 1979. On May 27, 1980, Mrs. Khan filed a second charge with the EEOC. In this charge, Mrs. Khan

claimed that the University had, because of her race and gender, demoted her, denied her tenure, terminated her employment and failed to pay her a salary equal to that paid similarly situated faculty members. The EEOC issued Mrs. Khan a right to sue letter on her first EEOC charge on August 28, 1981. Mrs. Khan failed to file any action, based on that right to sue letter. On September 30, 1982, the EEOC issued Mrs. Khan a right to sue letter on her second EEOC charge.

On January 14, 1983, Mrs. Khan served the University with a pro se complaint alleging violations of her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec 2000e, et seq. She alleged that ECSU had discriminated against her when it denied her tenure, failed to promote her,

terminated her employment and paid her an unequal salary. The University moved for summary judgment on all of the plaintiff's claims upon the ground she had failed to file a charge with the EEOC within one hundred eighty (180) days of any discriminatory act or practice alleged in the complaint.

On January 9, 1984, a magistrate recommended that all of the plaintiff's claims arising under Title VII be dismissed. The magistrate based his determination on the fact that Mrs. Khan had failed to file a complaint within ninety (90) days of September 15, 1981, the date on which she had received her right to sue notice on the first EEOC charge. The magistrate also determined that Mrs. Khan could not proceed under her second EEOC charge because she had failed to file the EEOC charge within one

hundred eighty (180) days of the alleged discriminatory acts. The magistrate found that the discriminatory acts occurred no later than August 2, 1979, when ECSU notified Mrs. Khan that she would receive a one-year terminal contract as a lecturer for the 1979-80 academic year. Regarding the appellant's Title VII claim for denial of equal pay, the magistrate determined that, although denial of equal pay is considered a continuing violation under Title VII, see Jenkins v. Home Insurance Co., 635 F.2d 310 (4th Cir. 1980), the appellant could not proceed on that claim because the claim was originally raised in her November 1978 EEOC charge (the first charge) and she had failed to file a complaint within ninety days of receiving her right to sue notice on that charge. The district court adopted the findings

of the magistrate, and dismissed Mrs. Khan's Title VII claims.

On January 25, 1984, the appellant filed an amendment to her complaint. In addition to the Title VII claims, the appellant alleged claims for relief under 42 U.S.C. Sec 1981 and Sec 1983, and under the Age Discrimination in Employment Act, 29 U.S.C. Sec 621, et seq.

On June 26, 1984, the district court heldthat the plaintiff's claim for relief under Sec 1981 and Sec 1983 were governed by a three-year statute of limitations. The court found that all of the plaintiff's claims for relief accrued on August 14, 1979, when the plaintiff signed her final contract with ECSU. Thus, the plaintiff's original complaint dated December 20, 1982 was filed beyond the three-year period and was barred. As

to the ADEA claim, the court held that the plaintiff had failed to prove that she had exhausted her administrative remedies.

Mrs. Khan has appealed the dismissal of her Title VII claims, her ADEA claim, and her claims arising under 42 U.S.C. Secs 1981 and 1983. She asserts that the district court erred in finding that the statute of limitations and filing deadlines for the various causes of action began to run in August of 1979, when ECSU notified Mrs. Khan that she would receive a one-year terminal contract as a lecturer at a specific salary for the 1979-80 academic year. Mrs. Khan alleges that later acts of discrimination occurred, which stand as either a "continuing violation," or as an independent, later instance of discrimination entitling her to relief.

Specifically, the appellant has alleged that she suffered from unequal pay (a continuing violation), and unequal work assignments.

II.

To file an action under Title VII, the aggrieved party must first comply with administrative filing requirements. After the alleged discriminatory events have ocurred, the aggrieved party has one hundred and eighty (180) days in which to file a claim with the EEOC. When and if the EEOC issues the aggrieved a "right to sue" letter, the party has ninety (90) days thereafter in which to file a claim. Failure to meet these filing deadlines renders the discriminatory occurrence "merely an unfortunate event in history which has no present legal consequences," United Airlines, Inc. v. Evans, 431 U.S. 553 (1976).

Like statutes of limitations, statutory filing deadlines heighten the importance of the determination of when the allegedly violative conduct occurred. In Delaware State College v. Ricks, 449 U.S. 250 (1980), the plaintiff had alleged that the denial of tenure at a state college deprived him of his rights under Title VII and under 42 U.S.C. Sec 1981. The Supreme Court held that the applicable limitations period began to run when the plaintiff received notice of his denial of tenure, and not on the date that his employment actually terminated. "Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination." Id. at 257. Thus, the filing limitations period commenced at the time the tenure decision was made and communicated to the aggrieved by letter.

The court reasoned that "the proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful," id. (emphasis in original). The Ricks opinion does recite the long-standing exception to the rule that the filing period is commenced by the occurence of the alleged discriminatory act: the exception being for "continuing violations," which serve to delay the commencement of the filing period until the date of the most recent occurrence of the discriminatory practice. See, e.g., United Airlines, Inc. v. Evans, 431 U.S. 553 (1976); Havens Realty Corp. v. Coleman, 455 U.S. 363 (1981).

It is clear that Ricks controls the appellant's claims that she was discriminatorily denied promotion and

tenure, and terminated. Ricks teaches that the legally significant discriminatory act occurred when the appellant received notice by letter of ECSU's decision to terminate her employment. The actual termination of the appellant, which occurred one year later, is merely the time at which the consequences of the alleged discriminatory act became most painful. Thus, the appellant's failure to raise her discrimination claim regarding the University's tenure decision within one hundred eighty (180) days after her receipt of the letter informing her that her position was terminal serves to bar her bringing these claims now.

The appellant has argued that her case differs from Ricks in that the University's denial of tenure constitutes a "continuing violation". In support of

her argument, the appellant refers to various salary and workload inequalities which allegedly arose out of a discriminatory animus. This argument, however, misconstures Ricks. Although Ricks held that its rule would not apply where the denial of tenure constituted a continuing violation, a continuing violation can be shown only by allegations detailing the same type of discriminatory action or violation. As the Supreme Court stated in Ricks, "[i]n order for the limitations period to commence with the date of discharge, Ricks would have had to allege and prove that the manner in which his employment was terminated differed discriminatorily from the manner in which the College termminated other professors who had also been denied tenure." Ricks at 258. Thus, the appellant in this case would

have had to allege and prove that the manner in which his employment was terminated differed discriminatorily from the manner in which the college terminated other professors who had also been denied tenure." Ricks at 258. Thus, the appellant in this case would have had to allege some acts of discrimination as to the termination itself in order to extend the life of her denial of tenure claim.

Any discrimination as to differences in work assignments or in salary can serve as grounds for bringing a Title VII action in and of themselves, but these claims of continuing discrimination will not allow the appellant to revive and seek damages for her denial of tenure. We thus hold that, in the absence of any later acts of discrimination regarding her termination of employment, the

appellant's Title VII claims for denial of tenure and termination are barred by the appellant's failure to file a claim within the statutory deadline.[1]

III.

Although the denial of tenure claim is time-barred, we find the appellant's claims alleging unequal pay and unequal work assignments were filed within the statutory deadlines. The district court erred in refusing to permit the appellant to file a claim based on the second right to sue letter issued by the EEOC. This

[1] Apparently recognizing that her denial of tenure and discriminatory termination claims can constitute "continuing violations" only if there exists some act of discrimination subsequent to her receipt of the letter from the University, which act of discrimination, like that mentioned in Ricks, in some way relates to the actual termination of employment, the appellant has argued that her termination itself was conducted in a discriminatory manner. We find this argument without merit and inadequately supported by the facts alleged.

court has held that the denial of equal pay is a violation which is "continuing," in that it arises with the receipt of each "unequal" paycheck. Jenkins v. Home Insurance Company, 635 F.2d 310 (4th Cir. 1980). The theory underlying Jenkins is that, unlike a decision to deny tenure, which is a single, isolated decision, equal pay is denied each time the employer chooses to pay his employee a reduced amount due to discriminatory motivations. Thus, like other repeated acts of discrimination, violation of the prohibition against discriminatory unequal pay occurs with each paycheck. As a result, the last legally significant instance of alleged discrimination under the unequal pay theory occurred upon the University's final salary payment to Mrs. Khan, in June of 1980.

The district court held that the

receipt by Mrs. Khan of her right to sue notice on her first charge shortly after her termination provided the appellant with her sole opportunity to bring suit. The court ruled that the right to sue notice received pursuant to Mrs. Khan's second EEOC charge, which had been filed about the time of her termination, was without effect. It is true that, where the EEOC issues a second right to sue letter concerning alleged discriminatory practices already covered by a prior right to sue letter, the second letter is without effect. See Brown v. Mead Corporation, 646 F.2d 1163 (6th Cir. 1981); Cleveland v. Douglas Aircraft Company, 509 F.2d 1027 (9th Cir. 1975). This case, however, involves a continuing violation, wherein each separate occurrence of the alleged discriminatory practice provides grounds for recovery,

having the effect of extending the period during which the aggrieved may bring suit. We hold that, where the EEOC has issued a second right to sue letter pursuant to a second charge of discriminaton arising from a continuing violation of Title VII, the claimant has the right to proceed on the second letter, despite her failure to file a complaint on her first right to sue notice.

IV.

The district court also erred in finding that the appellant's claim that she was required to undertake unequal work assignments was barred by her failure to file a complaint within the relevant time limitation arising after August 2, 1979, the date she received notice that she would be terminated at the end of the 1979-80 academic year.

The alleged inequality in work assignments did not occur until the second semester of Mrs. Khan's terminal year with the University, and she claims she could not have received "notice" of disparity in work assignments in August, 1979, some six months before they began. We hold that a claim of discrimination in work assignments arises when the inequality occurs. In the present case if the unequal work assignment ws made at the beginning of the second semester, or earlier, the assignment and the discrimination would be fixed at the time it was made. However, if the unequal work assignments were made on a weekly or daily basis, the discrimination would be continuing until the date of the last unequal work assignment. We remand to the district court to determine whether the appellant's claim concerning

discrimination in work assignments was timely.

We find that the district court was correct in dismissing the appellant's ADEA claim on the grounds that the appellant had failed to file a charge alleging a violation of her rights with the EEOC within one hundred eighty (180) days of the discriminatory act. Specifically, the district court found that the plaintiff, in a letter mailed to the EEOC dated February 25, 1983, failed to indicate sufficiently that she was making a claim under the ADEA. We find no reason to disturb this finding.

We thus affirm the district court's dismissal of the appellant's Title VII claim and 42 U.S.C. Sec 1981 and Sec 1983 claimms as they relate to denial of tenure, denial of promotion, and discriminatory termination. We also

affirm the district court in its dismissal of the appellant's ADEA claim. We reverse the district court, however, on its determination that the appellant's claim of unequal pay was barred by her failure to sue on the first right to sue letter. We reverse also the district court's finding that the appelllant's unequal work assignment claim arose as of August 2, 1979. We remand this case to the district court to determine when that claim arose, pursuant to this opinion. The appellant will then be entitled to proceed to the merits on any timely claim.

AFFIRMED IN PART;
REVERSED IN PART;
AND REMANDED.

STATUTES INVOLVED

42 U.S.C. Sec 1981 provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to ghe full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. Sec 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other pe'rson within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Consitiution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. Sec 2000e 5(e), provides:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred...except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency..., such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred,, or within thirty days after receiving notice that the State or local agency has terminated the proceeings under the State or local law, whichever is earlier...

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION

MUMTAZ BANO KHAN, Plaintiff

v. Civil No. 82-39-CIV-2

JIMMY R. JENKINS, et al,

Defendants

AMENDMENT TO COMPLAINT

COUNT 1

1. Jurisdiction of this Court is invoked pursuant to 28 USCS Secs 1343(3) and (4). This is an action in equity authorized by 42 USCS Sec 1983. The rights, privileges and immunities sought to be secured in this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and by 42 USCS Sec 1981.

2. This is a proceeding for a preliminary and permanent injunction

enjoining the Defendants from denying the Plaintiff employment, promotion, and tenure at the Defendant Elizabeth City State University, hereinafter University, solely because of her race or color. Plaintiffalso sues to enjoin Defendants from continuing their policy, practice, custom and usage of operating said University on a racially segregated basis, including the hiring, assignment, pay, and granting of tenure to professional school personnel on the basis of race and color.

3. Plaintiff herein is a citizen of the United States, of Asian descent who presently resides in Pasquotank County, State of North Carolina. Plaintiff was at the time of the events alleged herein, an employee of said University.

4. Defendants are the University, a duly organized educational institution organized and existing under the laws of

the State of North Carolina, the present acting Chancellor of the University, Jimmy R. Jenkins; Marion D. Thorpe, the previous Chancellor having died during the pendency of this action; and John H. Carson, the Chairman of the department in which the Plaintiff was employed.

5. Despite the various acts of the Congress of the United States, and decisions of the Supreme Court of the United States, which acts and decisions require the desegregation or termination of racial segregation in public education and elsewhere, both in and out of the State of North Carolina, the Defendants continue to operate the University in a racially segregated manner insofar as the hiring, promotion and granting of tenure to staff members and professional personnnel is concerned. Non-Negro personnel and professional staff members

are subjected to more stringent hiring, promotion, and tenure policies than are Negro personnel, and Negro personnel are granted preferential treatment in terms of assignments and pay.

6. Plaintiff alleges that the denial of her request and the requests of other similarly situated persons for promotion and the granting of tenure were made solely because of their race or color, pursuant to Defendants' policy, practice, custom and usage of segregation by race in the operation of the University. This policy, practice, custom and usage has resulted in the perpetuation of the Plaintiff and others similarly situated being relegated to inferior positions, pay and the refusal to grant to such persons tenure and other benefits.

7. Plaintiff, and the class which she represents, has suffered and will

continue to suffer irreparable injury by the policy, practice, custom and usage of Defendants complained of herein until same are enjoined by this Court. Plaintiffs have no other adequate remedy at law to redress the grievances herein set forth other than this suit for injunctive relief and the following counts as pled alternatively.

COUNT II

8. Plaintiff restates and adopts the paragraphs set forth in Count I.

9. Plaintiff is a citizen of the State of North Carolina.

10. The Defendants, Jimmy R. Jenkins and John H. Carson are citizens of the State of North Carolina and residents of this Judicial District, and the Defendant University is an educational institution organized and existing under the laws of the State of North Carolina and situate in

this judicial district.

11. The matter in controversy exceeds Ten Thousand Dollars ($10,000.00) exclusive of interest and costs.

12. This action arises under 42 USCS Secs 1343, 1983 and 1985 and this Court has jurisdiction of the action under 28 USCS Secs 1331, 1332, and 1343.

13. At all times pertinent to this Complaint, the Defendant, Jimmy R. Jenkins was a Dean of the Defendant University, but that he is now the acting Chancellor of said University, the Defendant, Marion D. Thorpe, the previous Chancellor, having died during the pendency of this action; and the Defendant, John H. Carson, was the Chairman of the Business Department at the said University; and in doing the acts and things hereinafter set forth, said Defendants were acting, in their respective capacities as stated, under

color fo the Statutes and Administrative Rules of the State of North Carolina, providing for the establishment of educational institutions in general and the Defendant University in particular as well as under the color of customs and usages of the State of North Carolina to maintain segregation of the various racial groups.

14. Plaintiff, who is an Asian American, was at all times pertinent to this action an employee of the Defendant Unversity in the Department of Business. That, because the Plaintiff is of Asian descent, she has been denied pay and tenure and, ultimately, employment by the Defendants.

15. Plaintiff has at all times maintained high professional standards in the performance of her duties while employed by the Defendant, and the laws of

the State of North Carolina and the policies of the said University were used as a mere pretext to deny the Plaintiff promotion, tenure, and ultimately employment and to provide color in denying the Plaintiff her exercise of her lawful and constitutional rights to employment, promotion and tenure.

16. Plaintiff has been subjected because of the above recited acts to the deprivation by the Defendants, under color of law, and of the custom and usages of the State of North Carolina, of rights, privileges, and immunities secured to her by the Constitution and laws of the United States and particularly her rights as set forth above for employment, promotion, and tenure at the Defendant University, which University receives substantial support from the governments of the State of North Carolina and the United States.

17. Plaintiff alleges that in doing the acts and things above complained of, the Defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive her of rights guaranteed to Plaintiff under the Constitution and laws of the United States and particularly those hereinabove enumerated.

18. Plaintiff alleges that as the direct consequence and result of the acts of the Defendants hereinabove complained of, Plaintiff was deprived of employment and continues to be deprived of employment, has suffered the loss of income, has suffered much anxiety and distress as well as embarrassment and the impairment of her reputation, and that she has been requiired to spend substantial sums of money and time as the result of the actions of the Defendants.

COUNT III

First Claim for Relief

19. Plaintiff restates and adopts the paragraphs set forth above in Counts I and II.

20. The jurisdiction of this Court is granted pursuant to 28 USCS Secs 451, 1337, 1343; 42 USCS Sec2000e-5(f)(3)(P.L. 88-352 Title VII, Sec 708(b).

21. This action is authorized and instituted pursuant to Sec 706(f)(1) and (3) and 704(a) of Title VII of the Civil Rights Act of 1964, 78 Stat. 243 (42 USCS Sec 2000e-5(f)(1),(3)), as amended, 86 Stat. 104 (42 USCS Sec 2000e-5 (f)); Sec 601 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252 (42 USCS Sec 2000(d)); R.S. Sec 1977 (42 USCS Sec 1981; R.S. Sec 1979 (42 USCS 6 1983); R.S. Sec 1980 (42 USCS Sec 1985); and the XIV Amendment of the Constitution of the United States of

America.

22. The unlawful employement practices alleged and other claims for relief alleged herein were and are being committed within this district.

23. Plaintiff is a female citizen of the United States and is now and has been a resident of the City of Elizabeth City, Pasquotank County, North Carolina for more than five years. The Defendant University is duly orgnaized and existing under the laws of the State of North Carolina in Elizabeth City, North Carolina.

24. That the Defendant University is an "Employer" within the meaning of Sec 701(b) of Title VII in that said Defendant is a person engaged in industry affecting commerce and employs, and has employed at all relevant times, a requisite number of persons; and is a "person" within the meaning of Sec 701(a) of Title VII, and

Sec 601 of Title VI.

25. That heretofore, in or about August 1971, the Plaintiff became employed by the University as an "Instructor" in the Business Department. The Plaintiff, at the time she was hired as an instructor, held a Bachelor of Science degree in Business Education and a Master of Business Administration degree. In addition thereto, she possessed experience in teaching having taught previously at the Defendant University for two years as an Assistant Instructor.

26. That in or about 1977, the Defendant University hired a male employee as an instructor; that the said male instructor had a comparable degree to that of the Plaintiff; and that the said male instructor was possessed at the time of his hiring of less experience and educational accomplishments than the

Plaintiff at said time. That, furthermore, the Defendant University hired a male employee as the replacement for the Plaintiff, which male employee did not have a bachelor's or master's degree in Business Administration, and who, on information and belief, had little or no experience in the teaching profession.

27. That, despite the fact that the Plaintiff has been denied promotions, pay increases, and subsequently, employment, at the Defendant University, the two male employees as set forth above have received pay increases and continue to be employed by the Defendant University. That the Plaintiff ws denied pay increases comparable to those of the aforesaid male employees and was subsequently dismissed despite the fact that the Plaintiff was as or more qualified for the position than the two males set forth above.

28. That, in addition to her previous degrees, at the time of her dismissal the Plaintiff had completed all of her course requirements for a doctor's degree in Business Administration at an institution authorized and approved by the Defendant University and with funds in part supplied by Defendant University, a degree requirement not met by either of the above male employees.

29. That charges of employment discrimination were filed by the Plaintiff with the Equal Employment Opportunity Commission, hereinafter referred to as "Commission" against the Defendant University. That the Commission reviewed the Plaintiff's charges and issued to the Defendant "right to sue" letters which the Defendant received in September 1981, and October 6, 1982. That the Defendant duly filed a civil action in this the

appropriate Federal District Court within ninety days of the receipt of the said notice.

30. The unlawful employment practices and violations of civil rights herein complained of occurred during the course of Plaintiff's employment with the University and were carried out by the Defendant's agents, servants, and employees and were committed because of the Plaintiff's sex.

31. The effect of the policy and practice pursued by the Defendant, as alleged herein, has been to limit, segregate, classify and discriminate against the Plaintiff in ways which jeopardize her career and tend to deprive her of employment opportunities by reason of her sex, and otherwise to adversely affect her status as an employee because of her sex in violation of Title VII. As

a further result of the conduct of the Defendant, the Plaintiff has been, and is being, deprived of income in the form of wages, prospective retirement benefits, future wages, seniority, and other benefits due her as a worker, because of her sex, in an amount believed by her to be in excess of Ninety Thousand Dollars ($90,000.00), the precise amount to be presented by proof at trial and after discovery herein.

32. That the Plaintiff stood at all times ready, willing, and able to perform her duties and to accept the benefits to which she was obligated to perform and entitled to receive.

33. Plaintiff has suffered, is now suffering, and will continue to suffer distress, damage to her reputation, and humiliation caused by the unlawful policies, practice, conduct, and usage of

Defendant, all to her damage in the sum of Five Hundred Thousand Dollars ($500,000.00).

34. By reason of the Defendant's action, the Plaintiff has found it necessary to retain the services of an attorney in the proceedings and heretofore, and is therefore entitled to attorney's fees pursuant to Sec 706 of Title VII and under the general equity powers of this Court.

Second Claim for Relief

* * *

(Second Claim for Relief pertained to sex discrimination and is omitted.)

COUNT IV

* * *

(Count IV pertained to age discrimination and is omitted.)

COUNT V

49. Plaintiff restates and adopts the paragraphs set forth above in Counts I

and II, the First and Second Claims for Relief in Count III and Count IV.

50. Jurisdiction of this court in this count is invoked pursuant to 28 USCS Secs 1331, 1343 and 2201. This is a suit in equity authorized and instituted pursuant to Title VII of the Act known as "The Civil Rights Act of 1964", 42 USCS Sec 2000e et seq. The jurisdiction of the Court is invoked to secure protection of and to redress deprivation of rights secured by Title VII of the Act known as "The Civil Rights Act of 1964", 42 USCS Sec 2000e et seq., providing for injunctive and other relief against racial discrimination in employment. The suit also is authroized under Title 42 USCS Secs 1981 and 2983 and the United States Constitutioon, more particularly the Fifth and Fourteenth Amendments thereto.

51. This is a proceeding for a

permanent injunction restraining Defendant from maintaining a policy, practice, custom and usage of withholding, denying or attempting to withhold or deny, and depriving or attempting to deprive or otherwise interfering solely on the ground of race and color with Plaintiff's rights to employment in the Defendant University. This also is a proceeding for a permanent injunction restraining the Defendant from operating and maintaining employment practices which interfere with Plaintiff's right to equal employment opportunities.

52. Plaintiff is an Asian American citizen residing in the State of North Carolina and an educator by profession.

53. Defendant University discriminates against Asian Americans by giving preferential treatment in hiring, promotion, pay, and the granting of tenure to members of the Negro race, which

benefits are denied to those of Asian descent.

COUNT VI

54. Plaintiff restates and adopts the paragraphs set forth above in Counts I and II the First and Second Claims for Relief in Count III Count IV and Count V.

55. Jurisdiction of this Court is invoked pursuant to the provisions of Title 28, USCS Secs 1331 and 1343; and Title 42 USCS Secs 1985 and 1986. The amount in controversy exceeds $10,000.00 exclusive of interest and costs.

56. Plaintiff is a citizen of the United States and a resident of Elizabeth City, State of North Carolina.

57. The Defendants, during the times set out in this Complaint, were officers, employees, and otherwise agents of the Defendant University and the State of North Carolina and were acting under color

of the laws of the State or North Carolina.

58. Plaintiff is a dark-skined Asian American who was employed by the Defendant Univeristy prior to her dismissal therefrom.

59. Notwithstanding that under the Constitution and laws of the State of North Carolina, the Defendants were empowered and duly authorized to prevent or aid in preventing the denial of equal protection of the laws and Constitution of the United States to the Plaintiff because of her race or color, the Defendants, acting in concert, wrongfully neglected and conspired to prevent the Plaintiff from continuing in her employment, receiving increases in pay and benefits, or tenure.

60. Notwithstanding the provisions of said laws empowering the Defendants to

secure to the Plaintiff the equal privileges and immunities under the Constitution and Laws of the United States that are secured to white persons which the Defendants could have secured to Plaintiff by the exercise of reasonable diligence, the Defendants, acting in concert, wrongfullly neglected to prevent or aid in preventing the commission of wrongs against the Plaintiff.

61. The conspiracy of the Defendants, wilfully acting or omitting to act in concert to deprive the Plaintiff of her right to employment, promotion, tenure, and otherwise contract with and perform her functions as an educator is in violation of the Constitution of the United States and various of its amendments.

62. As a direct and proximate result of the wrongful acts and omissions of the

Defendants complained of hereinm, the Defendants are liable to the Plaintiff for damages in the sum of Five Hundred Thousand Dollars ($500,000.00.

COUNT VII

First Claim for Relief

63. Plaintiff restates and adopts the paragraphs set forth above in Counts I and II< the First and Second Claims for Relief in Count III, and Counts IV, V, and VI.

64. Jurisdiction of this Court is invoked pursuant to Title 28, USCS Sec 1343. This is an action in equity seeking relief under Title 42, USCS Sec 1983, and Title 28, USCS Secs 2201 and 2202. The rights sought to be secured in this action are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and by Title 42, USCS

Secs 1981 and 1983.

65. This is a proceeding for a declaration that Defendants have carried on and are continuing to carry on a racially discriminatory system of employment, promotion and tenure within the Defendant University and for a permanent injunction enjoining the Defendants from carryiny on the racially discriminatory aspects of said employment in the future, along with other appropriate relief.

66. Plaintiff is an Asian American citizen of the United States who presently resides in Elizabeth City, North Carolina, who was employed by the Defendant University as is more completely and fully set forth hereinabove.

67. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on her behalf and on

behalf of all other Asian American employees, prospective employees, and past employees of the Defendant University who are similarly situated.

68. During the period from August 1971, to present, those persons hired, granted raises in pay, promotions, and granted tenure, have been predominately Negro.

69. The effect of such policies by the said University and the Defendants herein have been to generate feelings of inferiority among the Asian American faculty members at the Defendant institution in that the treatment of them has been usually interpreted to denote the inferiority of this racial group, which sense of inferiority has detrimentally affected the motivation of the Asian American employees of the University and their ability to become

useful members of the University community. That there has been a further tendency to retard the educational, social, and professional development of the Asian American employees of the University.

70. By reason of the facts hereinabove alleged, the rights of the Plaintiff and the class she represents under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and under Title 42 USCS Secs 1981 and 1983, have been and are being violated by the Defendants, and Plaintiff and the class she represents has suffered and will continue to suffer irreparable injury. Plaintiff and the class she represents, as more fully set forth above, has no adequate remedy at law to redress the grievances set forth.

Second Claim for Relief

71. Plaintiff restates and adopts the paragraphs set forth above in Counts and II, the First and Second Claims for Relief in Count VII.

72. Jurisdiction of this Court is invoked pursuant to Title 28, USCS Sec 1343. This is an action in equity seeking relief under Title 42, USCS Sec 1983 and Title 28, USCS Secs 2201 and 2202. The rights sought to be secured in this action are rights secured by an Act of Congress providing for equal rights and the protection of civil rights, to wit, Title 42 USCS Sec 2000d (Sec 601 of Title VII of tivil Rights Act of 1964).

73. This is a proceeding for a declaration that Defendants have carried on and are continuing to carry on racially discriminatory practices in the hiring,

paying, promotion, and granting of tenure in the Defendant University in violation of Title 42 USCS Sec 2000d, for a permanent injunction enjoining Defendants from carrying on the racially discriminatory aspects of such employment, and for other appropriate relief.

74. Defendants have applied for, have received, and have employed Federal financial assistance in the construction, operation and maintenance of the Defendant University.

75. By reason of the facts hereinabove alleged, and particularly by reason of the use of Federal financial assistance by Defendants in connection with and support of their racially discriminatory employment, pay, promotion, and tenure system and the proposed use of such assistance for the furtherance of such system, the rights of Plaintiff and

the class she represents under Title 42 USCS Sec 2000d have been and will continue to be violated, and Plaintiff and the class she represents has suffered and will continue to suffer irreparable injury. Plaintiff and the class she represents has no adequate remedy at law to redress the grievances herein set forth.

COUNT VIII

* * *

(Count VIII concerns punitive damages and alleged no new facts.)

WHEREFORE...

MUMTAZ BANO KHAN

ELIZABETH CITY STATE UNIVERSITY

April 25, 1983

TO: Dr. Jimmy R. Jenkins, Vice Chancellor, Academic Affairs

FROM: J.H. Carson, Chairman

RE: Mr. Dandeson Panda

It is my recommendation that Mr. Panda be given a terminal 1983-84 contract with the understanding that if he is accepted in an accredited Ph.D. program in Business, he will be given top priority for reemployment when he has completed the program or has made substantial progress toward the Ph.D. program.

PROOF OF SERVICE

STATE OF VIRGINIA

City of Richmond, to wit:

I, Oldric J. LaBell, Jr., member of the Virginia Bar, and resident of the City of Newport News, Virginia, depose and say that on the 2nd day of November, 1987, pursuant to Rule 28.5(c) of the Rules of the U.S. Supreme Court, I served a copy of the foregoing Petition for a Writ of Certiorari on Jimmy R. Jenkins, John H. Carson, Marion D. Thorpe, Elizabeth City State University, the Respondents herein, by mailing 3 copies thereof, in a duly addressed envelope with first class postage prepaid to Thomas J. Ziko, Associate Attorney General and Lacy H. Thornburg, Attorney General, North Carolina Dept. of Justice, P.O. BOX 629, Raleigh, North Carolina,

27602.

Oldric J. LaBell, Jr.

Subscribed and sworn to before me in my City and State aforesaid on this 2nd day of November, 1987.

My commission expires: 7-17-90

Notary Public